

Form RUT-7, Rolling Stock Certification, may be used by servicemen to document the rolling stock exemption when they transfer qualifying tangible personal property incident to sales of service to interstate carriers for hire. See 86 Ill. Adm. Code 140.201(e)(4) and 86 Ill. Adm. Code 130.340. (This is a PLR.)

January 11, 1999

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of June 18, 1998. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I am writing on behalf of our client, COMPANY an Illinois corporation, in order to request a Private Letter Ruling relating to a situation involving the Service Occupation Tax, the rolling stock exemption, appropriate service tax collection and the resale exemption.

The Company is a provider of repair services to the rail and trucking industry. The Company repairs trailers, containers and chassis. In conjunction with the repairs, the Company sells personal property incident to its provision of service.

BUSINESS, a company affiliated with the Company, was audited by the Illinois Department of Revenue ('IDOR') in February of 1997. As a result of the audit, BUSINESS paid approximately \$15,000 in back taxes, penalties and interest to the IDOR. Responding to information gained from BUSINESS's experience, the Company has collected taxes from the transportation companies it services on the personal property sold in connection with the provision of services. In addition, the Company applied for, received and relies upon a reseller's number provided by the IDOR (#####).

In May of 1998, the COMPANY2, a customer of the Company, asserted that it should not be subject to taxation under the Service Occupation Tax and that it would not pay any further taxes to the Company. The COMPANY2 based its assertion on advice from an IDOR auditor, who confirmed this advice to the Company.

In light of the varying tax information provided by the IDOR and the Company's desire to properly comply with Illinois tax laws, the Company requests a Private Letter Ruling in order to resolve the discrepancies.

We have researched the basis of taxation of personal property sales and have determined that due to the incidental nature of the Company's sales of personal property during provision of repair services, the Service Occupation Tax would apply and the Retailers' Occupation Tax would not apply to these transactions.

Assuming the incidental nature of the sales, the Company believes, and requests that the IDOR confirm, that the following is a valid and reasonable description of the relevant, proper taxation procedure.

- (1) When providing repair service, the Company should question whether the recipient of service ('Purchaser') intends to claim a rolling stock exemption to the Service Occupation Tax under 140.201(e)(4).
- (2) If the Purchaser indicates that it intends to claim such an exemption, the Company should request that the Purchaser provide written certification which would include (a) a statement that the Purchaser is an interstate carrier for hire, (b) a statement that the rolling stock to be serviced is rolling stock moving in interstate commerce, and (c) a valid certificate of authority number issued by the federal Surface Transportation Board, a valid certificate of authority number issued by the Illinois Commerce Commission or a valid number issued by another regulatory agency, such as the Federal Aviation Administration.
- (3) If the Purchaser indicates its intention to claim the rolling stock exemption and provides the proper written certification as specified above, the Company **should not collect tax** on the personal property sold incident to service. The Company should retain for its records (a) seller's name and address, (b) Purchaser's name and address, (c) Purchaser's certification number described above, (d) an identification or description of items purchased, (e) a statement by Purchaser that it is purchasing for use as rolling stock in interstate commerce for hire, and (f) the Purchaser's signature and date of signing.
- (4) If the Purchaser does not indicate that it intends to claim the rolling stock exemption or if the Purchaser fails to provide the proper written certification as specified above, the Company **should collect tax** on the personal property sold incident to service in one of the following manners:
 - (a) if the Company's bill contains the selling price of each item of personal property, tax can be calculated based on the price of each item and the total tax amount should be stated as a distinct item separate and apart from the selling price of the personal property; or
 - (b) if the Company's bill does not contain the individual selling price of each item of personal property, the tax amount can be based on 50% of the

serviceman's entire bill (but in no event shall this amount be less than the cost price of the personal property to the Company).

- (5) Based on the application of the rolling stock exemption as discussed in paragraph (3) or tax being collected as discussed in paragraph (4), the Company would not be required to pay tax to the vendor from which it purchased the personal property that is sold to the Purchaser incident to service. The Company should supply such manufacturer with its reseller's number.

The Company requests a Private Letter Ruling addressing whether this is a valid and reasonable description of the tax procedure the Company should follow in regards to applying the Service Occupation Tax, the rolling stock exemption, appropriate service tax collection, and the resale exemption.

The following statements are provided in compliance with 1200.110(b) relating to Private Letter Rulings:

- (A) The above is a complete statement of all material facts.
- (B) There are no contracts, licenses, agreements, instruments or other documents relevant to this request.
- (C) The relevant tax period is the present and there are no audits or litigation pending with the IDOR.
- (D) To the best of the knowledge of both the Company and myself, the IDOR has not previously ruled on the same or similar issue for the Company or a predecessor. Neither the Company nor any representatives of the Company have previously submitted the same or similar issue to the IDOR but withdrew it before a letter ruling was issued.
- (E) The authorities supporting the Company's view are the current regulations relating to the Retailer's Occupation Tax and the Service Occupation Tax, Publication 104 - Common Sales Tax Exemptions, ST-19 Retailer's Tax Booklet - General Information, and the instructions to the NUC-1 Form.
- (F) The Company was unable to find any authorities contrary to the Company's views.
- (G) There is no specific trade secret information which the Company requests be deleted from the publicly disseminated version of the Private Letter Ruling.
- (H) This request has been signed by a representative of the Company and the appropriate, executed power of attorney has been enclosed.

Please call me if you have any questions or any further information is necessary.

The Department's regulations for the Service Occupation Tax provide that "[s]ale of service" does not include "...a sale or transfer of tangible personal property as an incident to the rendering of service for interstate carriers for hire for use as rolling stock moving in interstate commerce or lessors under leases of one year or longer, executed or in effect at the time of purchase, to interstate carriers for hire for use as rolling stock moving in interstate commerce...." See 86 Ill. Adm. Code 140.201(e)(4), (copy enclosed).

In order to claim the exemption, servicemen must obtain a properly executed exemption certification from the purchaser and retain this certification in their books and records. Exemption certifications must comply with the requirements of 86 Ill. Adm. Code 130.340(e), (copy enclosed). Form RUT-7, Rolling Stock Certification (copy enclosed), may be used to provide the required certification to document the rolling stock exemption.

Under the Service Occupation Tax Act, the purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of the tangible personal property being transferred; (2) 50% of the entire bill; (3) Service Occupation Tax on the cost price of the tangible personal property being transferred if they are registered de minimis servicemen; or, (4) Use Tax on the cost price of the tangible personal property being transferred if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability applies only to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See part (f) of the enclosed copy of 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. These servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Servicemen who use the fourth method of calculating their tax liability may not claim the rolling stock exemption when selling tangible personal property incident to a sale of service to an interstate carrier. This is because these servicemen have chosen to pay Use Tax to their suppliers (or self-assess), and the rolling stock exemption does not "flow through" to them.

Servicemen who use any of the first three methods of calculating tax discussed above should provide their suppliers with resale certificates when they purchase tangible personal property that they will resell incident to sales of service. The requirements for resale certificates are set forth in the Department's regulations at 86 Ill. Adm. Code 130.1405, (copy enclosed).

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Bill Lundeen
Chief Counsel

BL:MPM:msk
Encl.